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SUPREME COURT, U.S.

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SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA PLAINTIFF-APPELLEE

-VS-

ROSCOE C. JACKSON DEFENDANT-APPELLANT

PETITION FOR CERTIORARI

ARTHUR CLARK
ROBERT WM. ENT
COUNSEL FOR PETITIONER
914 MAIN STREET
CINCINNATI, OHIO, 45202.

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QUESTIONS FOR REVIEW

WHETHER THE PROVISIONS OF SECTION 922(A)(1) OF TITLE 18, UNITED STATES CODE, ARE VAGUE AND INDEFINITE, AS TO THE PETITIONER AND OTHERS SIMILARLY SITUATED, IN VIOLATION OF THE DUE PROCESS PROVISION OF THE FIFTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES.

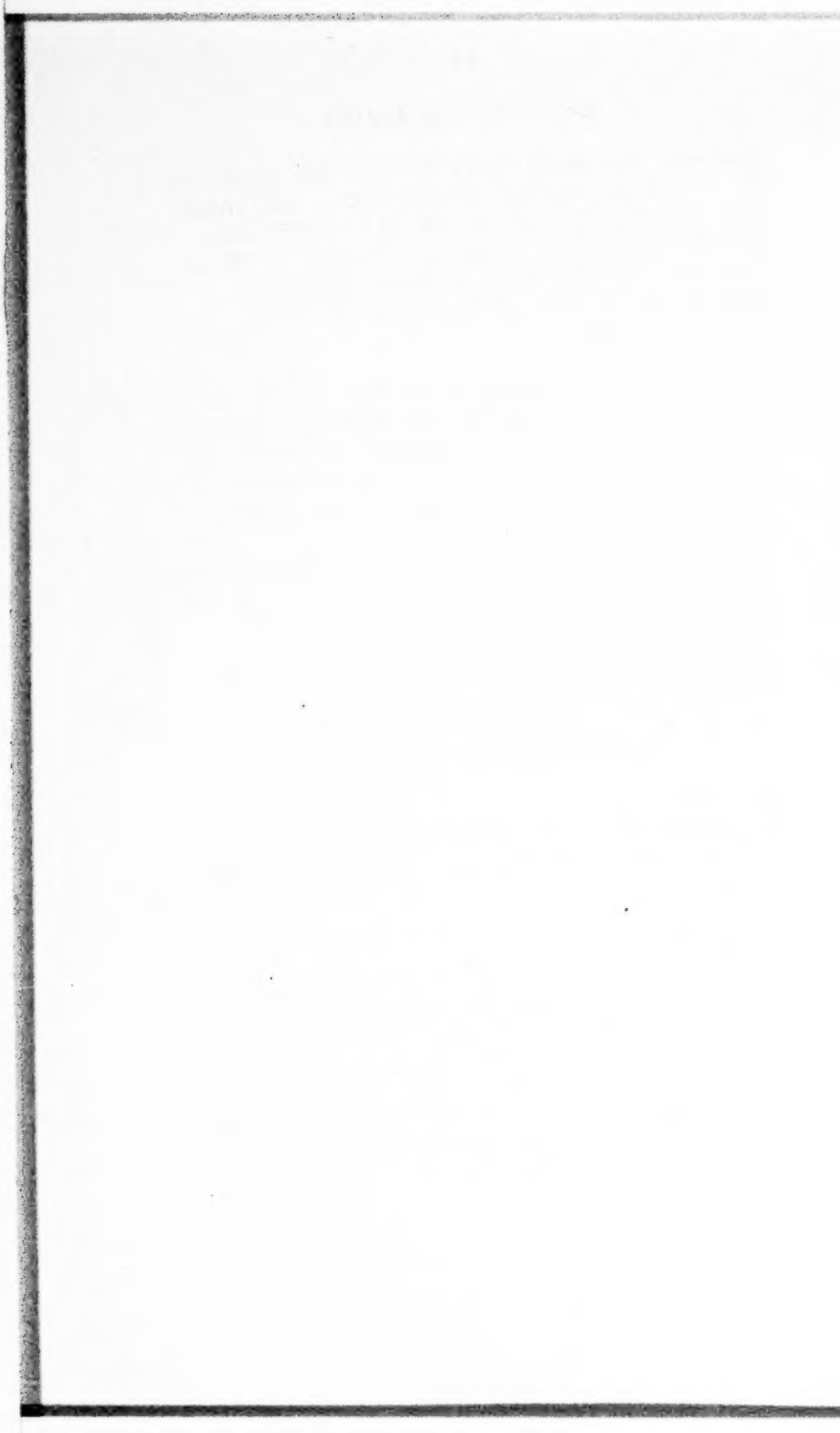
WHETHER THE APPLICATION OF THE ACT TO THE PETITIONER CONSTITUTES THE DEPRIVATION TO THE PETITIONER OF HIS PROPERTY WITHOUT DUE PROCESS OF LAW IN VIOLATION OF AMENDMENT V OF THE CONSTITUTION OF THE UNITED STATES

WHETHER THE HOLDING BY THE TRIAL COURT THAT SCIENTER IS NOT AN ESSENTIAL ELEMENT OF THE OFFENSE CHARGED IS IN VIOLATION OF THE PETITIONER'S RIGHT TO DUE PROCESS OF LAW UNDER AMENDMENT V OF THE CONSTITUTION OF THE UNITED STATES.

CONSTITUTIONAL PROVISIONS

AMENDMENT V.
NO PERSON SHALL :: :: :: BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW.

AMENDMENT XVIII
AFTER ONE YEAR FROM THE RATIFICATION OF THIS ARTICLE THE MANUFACTURE, SALE OR TRANSPORTATION OF INTOXICATING LIQUORS WITHIN, THE IMPORTATION THEREOF INTO, OR THE EXPORTATION THEREOF FROM THE UNITED STATES AND ALL TERRITORIES SUBJECT TO THE JURISDICTION THEREOF FOR BEVERAGE PURPOSES IS HEREBY PROHIBITED.

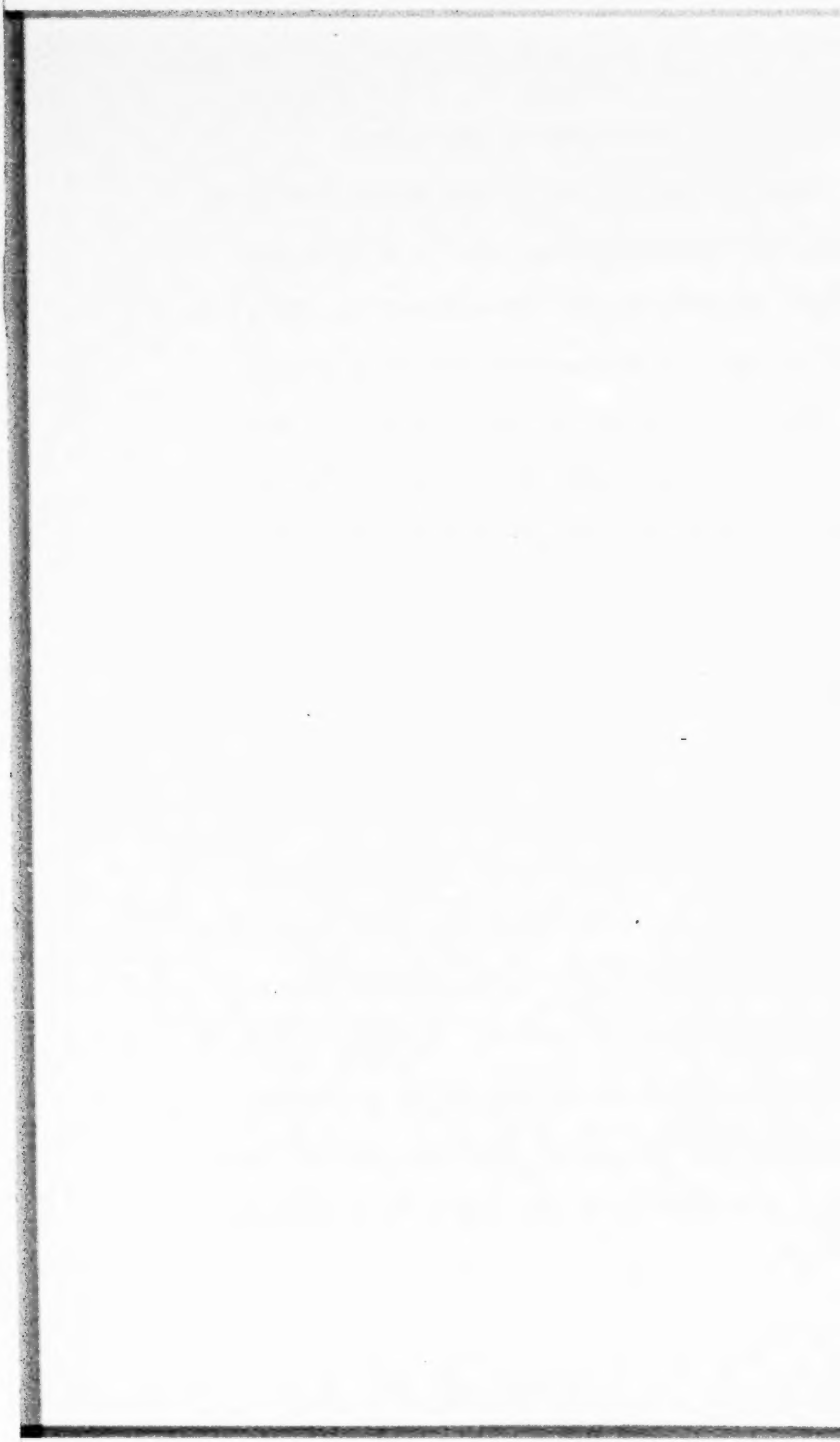


PETITION FOR CERTIORARI

COUNSEL FOR THE PETITIONER HEREIN PRAYS, ON BEHALF OF THE PETITIONER, THAT A WRIT OF CERT-IORARI ISSUE TO REVIEW THE JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, ENTERED IN THE WITHIN CAUSE ON JUNE 21, 1973, AFFIRMING THE JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO.

THE OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, STYLED UNITED STATES V. ROSCOE C. JACKSON, NO. 73-1109, IS APPENDED HERETO AS APPENDIX NO. 1. THE OPINION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO, STYLED UNITED STATES V. ROSCOE C. JACKSON, NO. 11,881, IS APPENDED HERETO AS APPENDIX NO. 2.

THE JURISDICTION OF THIS COURT IS INVOKED UNDER SECTION 1254(1) OF TITLE 28, UNITED STATES CODE. THE PETITIONER IS A PARTY TO A CRIMINAL



ACTION ON WHICH JUDGMENT WAS RENDERED IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT AFFIRMING THE LOWER COURT

STATEMENT OF THE CASE

ON JUNE 2, 1972 THE PETITIONER WAS INDICTED BY THE UNITED STATES GRAND JURY AND CHARGED WITH 'ENGAGING IN THE BUSINESS OF DEALING IN FIREARMS' WITHOUT THE REQUISITE LICENCE IN VIOLATION OF SECTION 922(A)(1) OF TITLE 18, UNITED STATES CODE.

ON JULY 20, 1972 THE DEFENDANT, HAVING WAIVED TRIAL BY JURY, WAS TRIED BEFORE JUDGE DAVID S. PORTER IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO.

AT THE CONCLUSION OF THE TRIAL, JUDGE PORTER ORDERED THE PARTIES TO SUBMIT WRITTEN BRIEFS ON THE ISSUES, WHICH BRIEFS WERE TIMELY FILED.

ON NOVEMBER 9, 1972 JUDGE PORTER ENTERED AN OPINION FINDING THE DEFENDANT GUILTY AS CHARGED IN THE INDICTMENT, WHICH VERDICT OF GUILTY WAS ENTERED BY THE SAID COURT ON NOVEMBER 13, 1972 AND SENTENCE WAS IMPOSED OF ONE YEAR PROBATION ON DECEMBER 21, 1972.

TIMELY NOTICE OF APPEAL WAS FILED FROM THE OPINION AND JUDGMENT OF THE TRIAL COURT TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, WHICH COURT HEARD ORAL ARGUMENTS ON THAT APPEAL ON JUNE 7, 1973 AND ENTERED AN OPINION AFFIRMING THE DISTRICT COURT ON JUNE 21, 1973.

IT IS FROM THIS OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, AFFIRMING THE LOWER COURT DECISION THAT REVIEW IS SOUGHT IN THE SUPREME COURT OF THE UNITED STATES.

INASMUCH AS THE OPINION OF THE COURT OF APPEALS WAS BRIEF AND GAVE NO SPECIFIC STATEMENTS REGARDING THE ISSUES RAISED, THE REFERENCES HEREIN WILL BE BASICALLY DIRECTED TO THE OPINION OF THE TRIAL COURT.

STATEMENT OF FACTS

THE PETITIONER IS A HOBBY COLLECTOR OF MODERN FIREARMS. ON OCCASIONS IN SEPTEMBER AND OCTOBER OF 1971 HE RENTED TABLE SPACE AT A FLEA MARKET TYPE OF AFFAIR AT THE FAYETTE COUNTY FAIRGROUNDS AT WASHINGTON COURTHOUSE, OHIO, WHERE HE DISPLAYED HIS COLLECTION OF FIREARMS, SOME FORTY IN NUMBER. HE SOLD SOME OF THESE FIREARMS. THEREAFTER IN JANUARY, 1972 THE PETITIONER AGAIN RENTED SOME TABLE SPACE AT A MEETING OF THE OHIO MILITARY COLLECTORS ASSOCIATION IN NORWOOD, OHIO WHERE HE AGAIN SOLD SOME FIREARMS.

AT THE DATES IN QUESTION THE PETITIONER WAS NOT A LICENCED 'DEALER' UNDER SECTION 922 OF TITLE 18, U.S.C., ALTHOUGH PETITIONER HAD HAD SUCH A LICENCE FOR THE PERIOD FROM OCTOBER, 1968 TO OCTOBER 1969.

THERE WAS TESTIMONY THAT DEFENDANT SOLD A FIREARM TO SPECIAL AGENT FRANK RAPIER, AN A.T.F. AGENT, WHO ALLEGEDLY TOLD THE PETITIONER

THAT HE RESIDED IN KENTUCKY, BUT THAT HE COULD SECURE AN OHIO DRIVER'S LICENCE FOR THE PURPOSE OF PURCHASING A FIREARM. THE PETITIONER'S TESTIMONY CONCERNING THIS TRANSACTION WAS SOMEWHAT DIFFERENT. HE SAID THAT ALTHOUGH THE MAN HAD STATED THAT HIS LEGAL RESIDENCE WAS IN KENTUCKY, THAT HE WAS WORKING IN OHIO AND WAS SEPARATED FROM HIS WIFE AND LIVING WITH A FRIEND OR RELATIVE IN NORWOOD, OHIO, AND THAT HE HAD AN OHIO DRIVER'S LICENCE.

THE PETITIONER WAS NOT ARRESTED AS A RESULT OF THIS TRANSACTION, HIS COLLECTION OF FIREARMS ON DISPLAY WAS NOT SEIZED, AND AT THE TIME HIS CASE WAS SUBMITTED TO THE GRAND JURY, HE WAS NOT INDICTED FOR VIOLATION OF SECTION 922(A)(3) OF THE ACT, DEALING WITH UNLICENCED INTERSTATE TRANSACTIONS, EVEN THOUGH THE PETITIONER HAD APPARENTLY LAID THE GUN UNDER SOME HOLSTERS ON HIS TABLE AND LEFT IT FOR THE WITNESS TO PICK UP.

THE PETITIONER TESTIFIED THAT HE HAD OBTAINED THE FEDERAL FIREARMS DEALER'S LICENCE WHEN THE

FEDERAL GUN CONTROL ACT OF 1968 WAS FIRST ENACTED BECAUSE HE, AS WELL AS MANY OTHER COLLECTORS, HAD BELIEVED THAT THE LICENCE WAS NECESSARY. HE STATED, HOWEVER, THAT WHEN HE BECAME AWARE OF THE REGULATIONS INTERPRETING THE LAW, IT WAS CLEAR THAT SINCE HE MAINTAINED THE COLLECTION AT HIS HOME, AND HAD NO SEPARATE PLACE OF BUSINESS THAT WAS OPEN TO THE PUBLIC, THAT HE WOULD NOT QUALIFY FOR THE LICENCE.

HE TESTIFIED FURTHER THAT HE HAD CONSIDERED THE POSSIBILITY OF SECURING THE COLLECTOR'S LICENCE, BUT WAS CONFUSED AS TO WHETHER THIS LICENCE WAS APPROPRIATE.

THE PETITIONER HAS BEEN A MEMBER OF THE OHIO GUN COLLECTOR'S ASSOCIATION, AS WELL AS SUBSTANTIALLY ALL OTHER GUN COLLECTING SOCIETIES IN SOUTHERN OHIO FOR MANY YEARS.

JOHN P. WEBER, PRESIDENT OF THE OHIO GUN COLLECTOR'S ASSOCIATION TESTIFIED THAT WHEN A COLLECTOR WISHES TO UPGRADE HIS COLLECTION OR TO SEEK A NEW LINE OF FIREARMS FOR THE COLLECTION,

IT IS USUALLY NECESSARY TO DISPOSE OF SOME ITEMS FROM THE COLLECTION. THE AMOUNT OF MONEY INVOLVED IN MOST COLLECTIONS PRECLUDES THE UPGRADING OF ANY COLLECTION WITHOUT DISPOSITION OF SOME ITEMS. ESPECIALLY IS THIS TRUE WHEN THE INDIVIDUAL COLLECTOR IS NOT A WEALTHY PERSON.

THE PETITIONER'S ACTIVITIES WERE NOT CARRIED ON IN A SURREPTITIOUS MANNER. HE OPENLY SECURED TABLE SPACE AT OPEN FLEA MARKET AFFAIRS AND AT GUN SHOWS.

THE PETITIONER TESTIFIED:

" A. I INTENDED TO DISPOSE OF PART OF THE GUNS THAT I HAD IN THE COLLECTION I PUT SOME OF THE GUNS THAT I HAD IN MY COLLECTION ON MY BOOKS. I NEVER ORDERED NEW GUNS FROM ANY DEALER. WHEN MY LICENCE EXPIRED, THEY LAPSED. I DID NOT APPLY FOR THEM"

"I INTENDED TO APPLY FOR A COLLECTOR'S LICENCE, WHICH I HAVE NEVER DONE. I NEVER RECEIVED - I DIDN'T RECEIVE AN APPLICATION FOR BOTH COLLECTOR AND FEDERAL FIREARMS LICENCE. I NEVER FINISHED FILLING OUT THE APPLICATION."

I AM STILL NOT SURE RIGHT TO THIS DAY WHAT KIND OF LICENCE A COLLECTOR NEEDS TO BE A COLLECTOR OR IF HE NEEDS A LICENCE. IT IS NOT CLEAR IN MY MIND. I DON'T UNDERSTAND THE LAW."

THE PETITIONER HAS NEVER HAD A PLACE OF BUSINESS, BUT MAINTAINED HIS COLLECTION IN HIS HOME. HIS HOME WAS NEVER LISTED IN THE TELEPHONE DIRECTORY AS A PLACE OF BUSINESS, NOR HAS HE EVER HELD HIMSELF OUT AS ENGAGING IN ANY BUSINESS.

THE PETITIONER IS A RETIRED NAVAL PERSON, AND IN MORE RECENT YEARS HAS BEEN EMPLOYED BY THE UNITED STATES POSTAL SERVICE AS A GARAGE MECHANIC.

A R G U M E N T

WHETHER THE PROVISIONS OF SECTION 922(A)(1) OF TITLE 18, UNITED STATES CODE, ARE VAGUE AND INDEFINITE, AS TO THE PETITIONER AND OTHERS SIMILARLY SITUATED, IN VIOLATION OF THE DUE PROCESS PROVISION OF THE FIFTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES

THE PETITIONER WAS INDICTED AND CONVICTED OF VIOATION OF SECTION 922(A)(1) OF TITLE 18, UNITED STATES CODE, HEREINAFTER REFERRED TO AS SECTION 922(A)(1) OF THE ACT. THIS PROVISION STATES:

> '922. UNLAWFUL ACTS
> (A) IT SHALL BE UNLAWFUL
> (1) FOR ANY PERSON EXCEPT A LICENCED IMPORTER, LICENCED MANUFACTURER, OR LICENCED DEALER, TO ENGAGE IN THE BUSINESS OF IMPORTING, MANUFACTURING, OR DEALING IN FIREARMS OR AMMUNITION :: :: ::'

SECTION 921 OF THE ACT DEFINES THE TERM "DEALER":

> 'SEC. 921 DEFINITIONS.
> (11) THE TERM 'DEALER' MEANS (A) ANY PERSON ENGAGED IN THE BUSINESS OF SELLING FIREARMS OR AMMUNITION AT WHOLESALE OR RETAIL, (B) ANY PERSON ENGAGED IN THE BUSINESS OF REPAIRING FIREARMS, OR OF MAKING OR FITTING SPECIAL BARRELS, STOCKS, OR TRIGGER MECHANISMS TO FIREARMS, OR (C) ANY PERSON WHO IS A PAWNBROKER. :: :: ::'

SECTION 924 OF THE ACT SETS FORTH SEVERE CRIMINAL PENALTIES FOR VIOLATION OF THE PROVISIONS OF THIS TITLE AND ACT.

ACCORDINGLY, THE ACT IS A CRIMINAL STATUTE AND MUST BE INTERPRETED MOST FAVORABLY TO THE CITIZEN-ACCUSED AND MOST STRICTLY AGAINST THE GOVERNMENT SEEKING TO IMPOSE THE CRIMINAL SANCTIONS.

A CASUAL READING OF SECTION 922(A)(1) OF THE ACT, HOWEVER, CLEARLY REVEALS THAT THE ACT DOES NOT PROSCRIBE THE SALE OF FIREARMS. IT MERELY COMPELS THAT PERSONS 'ENGAGED IN THE BUSINESS' OF DEALING IN FIREARMS MUST SECURE THE FEDERAL LICENCE AND COMPLY WITH THE REGULATIONS REGARDING RECORD-KEEPING WHICH IS THE VERY PURPOSE OF THE ACT.

THUS, IT IS CLEAR THAT THERE IS NO PROHIBITION AGAINST CASUAL SALES OF FIREARMS.

THIS COURT HAS REPEATEDLY HELD THAT A CRIMINAL STATUTE MUST BE SUFFICIENTLY CLEAR AND UNAMBIGUOUS TO ALERT A PERSON OF ORDINARY INTELLIGENCE AS TO JUST WHAT IS FORBIDDEN UNDER PENALTY OF CRIMINAL SANCTION

IN UNITED STATES V. HARRIS 347 U.S. 12, THE COURT STATED: "NO MAN SHALL BE HELD CRIMINALLY RESPONSIBLE FOR CONDUCT WHICH HE COULD NOT REASONABLY UNDERSTAND TO BE PROSCRIBED."

IF THE STATUTE IN QUESTION FAILS TO MEET THIS TEST OF REASONABLE CERTAINTY, THE STATUTE MUST BE HELD TO VIOLATE THE DUE PROCESS PROVISION OF THE FIFTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES.

THE HARRIS CASE, CITED SUPRA, IS REASONABLY REPRESENTATIVE OF THE RATIONALE OF THIS COURT IN DETERMINING SUCH DUE PROCESS QUESTIONS.

IN MOST CASES WHICH HAVE BEEN DECIDED UNDER SECTION 922(A)(1) OF THE ACT, THE FACTS HAVE BEEN SUCH THAT THE DEFENDANT-APPELLANT WAS REASONABLY ON NOTICE THAT HE WAS IN VIOLATION. IN MOST OF THOSE CASES THE ACTIVITIES COULD NOT REASONABLY HAVE BEEN CONSTRUED AS OTHER THAN BUSINESS ACTIVITIES.

IN THE PRESENT CASE, HOWEVER, A SUBSTANTIAL DISTINCTION EXISTS.

THE PETITIONER HEREIN HAS BEEN A HOBBY COL-LECTOR OF FIREARMS FOR MANY YEARS. WHEN THE ACT WAS FIRST ANNOUNCED, HE, AS MANY OTHERS DID, APPLIED FOR AND RECEIVED THE DEALER'S LICENCE. HIS RESIDENCE WAS THE 'BUSINESS PREMISES' THEREON. HOWEVER, WHEN HE EXAMINED THE REGULATIONS PRO-

MULGATED BY THE SECRETARY OF THE TREASURY, HE WAS CONVINCED THAT HE DID NOT QUALIFY FOR THE DEALER'S LICENCE. THESE REGULATIONS PROVIDE:

> '178.11 MEANING OF TERMS
> BUSINESS PREMISES: THE PROPERTY ON WHICH FIREARMS OR AMMUNITION IMPORTING, MANUFACTURING, OR DEALING BUSINESS IS OR WILL BE CONDUCTED. A PRIVATE DWELLING, NO PART OF WHICH IS OPEN TO THE PUBLIC, WILL NOT BE RECOGNIZED AS COMING WITHIN THE MEANING OF THE TERM.'

THE ACT DOES NOT REQUIRE LICENCING OF ANY PERSON WHO SELLS FIREARMS. IT MERELY REQUIRES A PERSON 'ENGAGED IN THE BUSINESS OF DEALING IN FIREARMS' TO BE SO LICENCED.

NEITHER THE STATUTE, NOR THE REGULATIONS THEREUNDER, SET FORTH ANY IDENTIFIABLE OR UNDERSTANDABLE STANDARD OR CRITERIA FROM WHICH ANY HOBBY FIREARMS COLLECTOR OF ORDINARY INTELLIGENCE COULD ASCERTAIN JUST WHEN HE COULD DISPOSE OF ITEMS IN HIS COLLECTION WITHOUT VIOLATION OF THE ACT. THERE IS NOT EVEN A SUGGESTION THAT ANY CERTAIN NUMBER OF SALES SHOULD BE CONSTRUED AS CONSTITUTING A 'BUSINESS' ACTIVITY.

CLEARLY, A SINGLE SALE WOULD NOT BE VIOLATIVE OF THE STATUTE, IF MADE BY A HOBBY COLLECTOR. WOULD

TWO SUCH SALES BE SO CONSTRUED?

THERE IS JUST NO STANDARD SET FORTH IN THE ACT, OR IN THE REGULATIONS THEREUNDER, FROM WHICH SUCH A HOBBY COLLECTOR COULD DETERMINE WHETHER THE SALE OF A PART OF HIS COLLECTION WOULD BE VIOLATIVE OF THE ACT, AND FROM THE REGULATION CITED ABOVE IT WOULD APPEAR THAT EVEN IF HE CONCLUDED THAT HE SHOULD BE LICENCED TO SELL ANY PART THEREOF, HE MAY NOT BE ABLE TO SECURE THE LICENCE FOR WANT OF 'BUSINESS PREMISES'.

MUST A CITIZEN SEEK AN ANSWER TO THE LEGALITY OF HIS PROPOSED CONDUCT FROM THE CASE LAW, OR MAY HE RELY UPON THE STATUTE ITSELF? MUST HE ALWAYS INTERPRET THE STATUTE MOST STRICTLY AGAINST THE ACTIVITY WHICH HE CONTEMPLATES, OR MAY HE SEEK HIS ANSWER FROM THE ORDINARY USE OF THE WORDS HE SEES IN THE STATUTE?

IN THIS INSTANCE, HOWEVER, EVEN SHOULD HE SEEK HIS ANSWER FROM PRECEDENT DECISIONS OF THE COURTS, HE IS STILL WITHOUT ANY DEFINITIVE SOLUTION.

THE FEDERAL AND STATE COURTS OF THE UNITED STATES HAVE CONSIDERED THE QUESTION OF THE DEF-

INITION OF THE TERM 'ENGAGED IN BUSINESS' ON MANY OCCASIONS, AND HAVE COME TO ALMOST AS MANY ANSWERS.

USUALLY THE COURT HAS STATED THAT EACH SUCH OCCASION THAT THE DETERMINATION OF THE STATUS IS DEPENDENT UPON THE FACTS AND CIRCUMSTANCES OF EACH SUCH CASE. THE COURTS OF ONE STATE OR FEDERAL JUDICIAL DISTRICT OR CIRCUIT MAY FIND THAT ONE IS NOT ENGAGED IN BUSINESS UNDER FACTS THAT THE COURTS IN ANOTHER STATE OR JUDICIAL DISTRICT OR CIRCUIT FIND ADEQUATE TO PUT THE MAN IN BUSINESS.

MOST OF THE LIQUOR LICENCING VIOLATION CASES HAVE HELD THAT A PERSON IS ENGAGED IN BUSINESS UPON MUCH LESS EVIDENCE THAN IN CASES THAT INVOLVE SOME LESS LICENCABLE PRODUCT.

IN THE INSTANT CASE, THE TRIAL COURT RELIED UPON THE DECISION OF THE SIXTH CIRCUIT COURT OF APPEALS IN ITS DECISION IN BAILEY V. UNITED STATES (C.C.A. 6TH 1919) 259 F. 88 WHEREIN THE COURT HELD THE DEFENDANT TO BE CARRYING ON THE BUSINESS OF A LIQUOR DEALER, WHEN IT FOUND:

> "THAT THE DEFENDANT EITHER HAD LIQUOR ON HAND OR WAS READY AND ABLE TO PROCURE IT,

> IN EITHER CASE WITH THE PURPOSE OF SELLING SOME OR ALL OF IT TO SUCH PERSONS AS HE MIGHT FROM TIME TO TIME CONCLUDE TO ACCEPT AS CUSTOMERS."

COMPARE, HOWEVER, SUCH CASES AS SUPREME MALT PRODUCTS COMPANY, INC., V. UNITED STATES (C.A 1ST 1946) 153 F. (2D) 5, WHEREIN THE FIRST CIRCUIT HELD:

> "THE WORDS OF THE STATUTE, 'TO ENGAGE IN THE BUSINESS' IMPLY AN ELEMENT OF CONTINUITY OR HABITUAL PRACTICE. 'ENGAGED IN BUSINESS' MEANS OCCUPIED IN BUSINESS, EMPLOYED IN BUSINESS. 'CARRYING ON A BUSINESS' DOES NOT MEAN THE PERFORMANCE OF A SINGLE DISCONNECTED BUSINESS ACT. IT MEANS THE CONDUCTING, PRODUCING AND CONTINUING OF BUSINESS BY PERFORMING PROGRESSIVELY ALL OF THE ACTS NORMALLY INCIDENT THERETO, AND LIKEWISE THE EXPRESSION 'DOING BUSINESS' WHEN EMPLOYED AS DESCRIPTIVE OF THE OCCUPATION CONVEYS THE IDEA OF BUSINESS BEING DONE, NOT FROM TIME TO TIME, BUT ALL OF THE TIME."

THESE ARE, OF COURSE, ONLY TWO OF THE MYRIAD OF CASES ATTEMPTING TO DEFINE THE TERM, BUT THEY ARE ADEQUATE TO ESTABLISH THE DIFFICULTY IN WHICH THE COURTS HAVE FOUND THEMSELVES IN MAKING SOME DEFINITIVE DETERMINATION OF THE TERM.

ACCORDINGLY, IT IS APPARENT THAT IF THE MAN IN THE STREET, THE ORDINARY PRUDENT PERSON, WERE TO LOOK TO THE CASE LAW TO DETERMINE IF ACTIVITIES WHICH HE CONTEMPLATED WERE PROHIBITED BY AN ACT

WHICH PROSCRIBES 'ENGAGING IN BUSINESS' HE WOULD BE CONFRONTED WITH SO MANY CONFLICTING OPINIONS OF THE VARIOUS COURTS THAT HE WOULD HAVE MUCH DIFFICULTY IN COMING TO ANY CONCLUSION AS TO WHETHER THE STATUTE WOULD PRECLUDE HIS CONTEMPLATED ACTIVITY

MOREOVER, IT IS NOT ADEQUATE TO SIMPLY CONCLUDE THAT IF THE READER OF A CRIMINAL STATUTE IS UNABLE TO DETERMINE WHETHER HIS CONTEMPLATED ACTIVITY WOULD BE VIOLATIVE OF THE LAW THAT HE SHOULD SIMPLY PLAY SAFE AND REFRAIN FROM THE ACTIVITY.

A CITIZEN SHOULD BE ENTITLED TO ENGAGE IN ANY ACTIVITY WHICH IS NOT SPECIFICALLY PROSCRIBED BY LAW, AND HE SHOULD BE CAPABLE OF DETERMINING FROM A READING OF THE STATUTE JUST WHAT ACTIVITIES ARE PROSCRIBED. IF AN ACTIVITY IS NOT SPECIFICALLY CONDEMNED, IT IS LAWFUL.

IN THIS CONNECTION, THIS COURT HAS HELD THAT

> "THE VICE OF THE VAGUE AND INDEFINITE STATUTE IS TWOFOLD: FIRSTLY, IT FAILS TO INFORM THE CITIZEN OF HIS DUTY, AND SECONDLY, IT FAILS TO ESTABLISH FOR THE TRIER OF THE FACTS THE ELEMENTS TO BE ESTABLISHED."
> BOUIE V. COLUMBIA 12 L. ED. (2D) 894

MOREOVER, ATTEMPTS TO CURE THE VAGUE AND INDEFINITE STATUTE BY JUDICIAL INTERPRETATION WHICH NARROWLY CONSTRUE THE ELEMENTS OF THE OFFENSE DOES NOT CURE THE DEFECT, FOR THE COURT MUST ALSO SPECULATE AS TO THE ELEMENTS TO WHICH THE CONGRESS REFERRED. PIERCE V. UNITED STATES 314 U.S. 306.

THE TRIAL COURT, IN THE PRESENT CASE, SIMPLY HELD THE STATUTE TO BE CLEAR AND UNAMBIGUOUS, AND MADE NO EFFORT TO EVEN CONSTRUE THE STATUTE IN A NARROW MANNER.

IT IS SUBMITTED THAT THE GUN CONTROL ACT OF 1968 IS NOT CLEAR AND UNAMBIGUOUS AS IT RELATES TO THIS PETITIONER, AND IT IS WITH REGARD TO THIS PETITIONER THAT THE ACT MUST BE CONSTRUED.

THE ATTENTION OF THE COURT IS FURTHER RESPECTFULLY DIRECTED TO SECTION 928 OF THE ACT:

"928. SEPARABILITY
IF ANY PROVISION OF THIS CHAPTER OR THE APPLICATION THEREOF TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID, THE REMAINDER OF THE CHAPTER AND THE APPLICATION OF SUCH PROVISION TO OTHER PERSONS NOT SIMILARLY SITUATED OR TO OTHER CIRCUMSTANCES SHALL NOT BE AFFECTED THEREBY."

ACCORDINGLY, CONGRESS RECOGNIZED AND MADE PROVISION FOR THE EXCLUSION OF CERTAIN PERSONS AND CIRCUMSTANCES WHICH MAY INVALIDATE THE ACT AS TO THEM.

IN THE CASE OF THE HOBBY COLLECTOR SUCH AN EXEMPTION EXISTS.

IN SUPPORT OF THIS CONTENTION THE ATTENTION OF THE COURT IS FURTHER DIRECTED TO THE PREAMBLE TO THE ACT WHICH PROVIDES:

"THE CONGRESS HEREBY DECLARES THAT THE PURPOSE OF THIS TITLE IS TO PROVIDE SUPPORT TO FEDERAL STATE AND LOCAL LAW ENFORCEMENT OFFICIALS IN THEIR FIGHT AGAINST CRIME AND VIOLENCE, AND IT IS NOT THE PURPOSE OF THIS TITLE TO PLACE ANY UNDUE OR UNNECESSARY FEDERAL RESTRICTIONS OR BURDENS ON LAW ABIDING CITIZENS WITH RESPECT TO THE ACQUISITION, POSSESSION, OR USE OF FIREARMS APPROPRIATE TO THE PURPOSE OF HUNTING, TRAPSHOOTING, TARGET SHOOTING, PERSONAL PROTECTION, OR ANY OTHER LAWFUL ACTIVITY, AND THAT THIS TITLE IS NOT INTENDED

TO DISCOURAGE OR ELIMINATE THE PRIVATE OWNERSHIP OR USE OF FIREARMS BY LAW ABIDING CITIZENS FOR LAWFUL PURPOSES OR PROVIDE FOR THE IMPOSITION BY FEDERAL REGULATIONS OF ANY PROCEDURES OR REQUIREMENTS OTHER THAN THOSE REASONABLY NECESSARY TO IMPLEMENT AND EFFECTUATE THE PROVISIONS OF THIS TITLE."

THE COLLECTION OF FIREARMS AS A HOBBY IS A 'LAWFUL PURPOSE' WITHIN THE SCOPE OF THE FOREGOING PREAMBLE. FOR THIS REASON, IT IS SUBMITTED THAT THE ACT WAS EITHER NOT INTENDED TO APPLY TO THE PRESENT FACTUAL SITUATION, OR THE ACT IS AMBIGUOUS IN THAT IT DOES NOT AFFORD THE HOBBY COLLECTOR WITH AN ASCERTAINABLE STANDARD FROM WHICH HE MAY DETERMINE JUST WHEN HIS ACTIVITIES IN PURSUING HIS HOBBY MIGHT RESULT IN VIOLATION OF THE LAW.

IN THIS CONNECTION, IN PURSUING THE HOBBY OF COLLECTING FIREARMS, AS IN ANY OTHER HOBBY, IT IS OCCASIONALLY NECESSARY TO PURCHASE AND TO SELL OFF ITEMS FROM THE COLLECTION. THIS NEED TO SELL IS MORE IMPORTANT IN THE CASE OF THE GUN COLLECTOR THAN IN MANY OTHER HOBBIES FOR THE

REASON THAT THERE IS JUST TOO MUCH MONEY INVOLVED IN THE ACQUISITION OF FIREARMS FOR ANY BUT THE VERY WEALTHY TO CONTINUE TO ACQUIRE ITEMS WITHOUT THE DISPOSITION OF OTHER ITEMS OF LESSER INTEREST.

FOR THIS REASON, IT WOULD APPEAR THAT THE COLLECTOR MAY, FROM TIME TO TIME, BE CONSIDERED AS A 'DEALER'. HE DOES BUY AND SELL ON OCCASION.

THE ACT, HOWEVER, DOES NOT REQUIRE LICENCING OF A PERSON SIMPLY BECAUSE HE MAY DEAL OR BE A DEALER IN FIREARMS. THE ACT REQUIRES THE LICENCE OF ONE 'ENGAGED IN THE BUSINESS' OF DEALING IN FIREARMS.

ALTHOUGH THIS DISTINCTION MAY BE SOMEWHAT CLOSE AND CONSTRICTED, IT IS NEVERTHELESS A PART OF THE STATUTORY REQUIREMENT, AND SHOULD BE CONSIDERED AS A VALID DISTINCTION. THE TRIAL COURT GAVE THIS ELEMENT NO CONSIDERATION.

IT IS OF INTEREST TO NOTE THAT THE PETITIONER MADE SALES ON ONLY THREE OCCASIONS DURING A PERIOD OF SOME SIX MONTHS, AND AT EACH OCCASION AT A FLEA MARKET OR GUN SHOW TYPE OF AFFAIR. MOREOVER, HE DID NOT SEEK INVENTORY FOR RESALE BY

PURCHASING ITEMS FROM DEALERS. HE DISPLAYED ONLY HIS OWN HOBBY COLLECTION.

IT IS ALSO OF INTEREST TO NOTE THAT THE ACT PROVIDES FOR A SPECIAL LICENCE FOR 'COLLECTORS OF CURIOS AND RELICS', WHICH ARE ANTIQUES, MUSEUM PIECES OR UNIQUE ITEMS. THERE IS NO LICENCE AVAILABLE TO THE HOBBY 'COLLECTOR' OF MODERN FIREARMS. INASMUCH AS THE REGULATIONS PRECLUDE THE LICENCING OF THE COLLECTOR WHO DOES NOT MAINTAIN SEPARATE BUSINESS PREMISES, IT APPEARS THAT THERE IS AN AREA OF OMISSION IN THE ACT.

IT IS TO THIS OMISSION THAT THIS PETITION IS PRIMARILY ADDRESSED, TOGETHER WITH THE OBVIOUS AMBIGUITY IN THE ACT AS IT RELATES TO A PERSON IN THE POSITION OF THE PETITIONER.

CERTIORARI IS SOUGHT SINCE A FEDERAL COURT OF APPEALS HAS DECIDED A QUESTION OF IMPORTANT FEDERAL LAW, WHICH HAS NOT BEEN, BUT SHOULD BE SETTLED BY THE SUPREME COURT, AND CERTIORARI IS JUSTIFIED UNDER RULE 19 OF THE RULES OF THE COURT.

WHETHER THE APPLICATION OF THE ACT TO THE PETITIONER CONSTITUTES THE DEPRIVATION TO THE PETITIONER OF HIS PROPERTY WITHOUT DUE PROCESS OF LAW IN VIOLATION OF AMENDMENT V OF THE CONSTITUTION OF THE UNITED STATES.

THIS ISSUE, WHICH IS BELIEVED TO BE INTER-RELATED AND INTERCONNECTED WITH THE FOREGOING ISSUE, IS SET FORTH SEPARATELY HEREIN FOR PURPOSES OF CLARITY.

IN THE OPINION THE TRIAL COURT HELD THAT THE PETITIONER, ALTHOUGH A HOBBY COLLECTOR OF FIREARMS, WAS 'ENGAGED IN THE BUSINESS OF DEALING IN FIRE-ARMS WITHIN THE INTENT AND MEANING OF SECTION 922 (A)(1) OF THE ACT, UPON THE GROUNDS THAT:

> "WE CONCLUDE THAT ANYONE IS ENGAGED IN THE BUSINESS OF DEALING IN FIREARMS IF THEY HAVE GUNS ON HAND OR ARE READY AND ABLE TO PROCURE THEM, IN EITHER CASE FOR THE PURPOSE OF SELLING SOME OR ALL OF THEM TO SUCH PERSONS AS THEY MIGHT FROM TIME TO TIME CONCLUDE TO ACCEPT AS CUSTOMERS."

AMENDMENT V OF THE CONSTITUTION OF THE UNITED STATES PROVIDES, INTER ALIA:

> NO PERSON SHALL * * * BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW.

THE PETITIONER HEREIN IS A HOBBY COLLECTOR OF FIREARMS AND OWNS A SUBSTANTIAL COLLECTION THEREOF.

IN THE EVENT THAT IT MIGHT BE CONCLUDED THAT THE PETITIONER 'DEALS' IN SUCH FIREARMS, HE IS PRECLUDED FROM ACQUISITION OF THE FEDERAL DEALER'S LICENCE BY REASON OF THE FACT THAT HE DOES NOT HAVE A SEPARATE PLACE OF BUSINESS OUTSIDE OF HIS HOME.

ACCORDINGLY, WOULD SUCH APPLICATION OF THE ACT DEPRIVE THIS PETITIONER OF THE ABILITY TO DISPOSE OF HIS COLLECTION? THE ANSWER TO THIS QUESTION APPEARS CLEAR AND ABSOLUTE.

ANY LEGISLATIVE ACT WHICH IS CONSTRUED TO DEPRIVE A CITIZEN OF THE RIGHT TO DISPOSE OF PROPERTY, OTHERWISE LAWFULLY OWNED AND HELD, MUST BE STRICKEN DOWN AS VIOLATIVE OF THIS PROVISION.

IN THIS CONNECTION, EVEN WHEN THE EIGHTEENTH AMENDMENT WAS ADOPTED, MANUFACTURERS

OF INTOXICATING LIQUORS WERE ALLOWED ONE FULL YEAR IN WHICH TO DISPOSE OF THEIR PROPERTY. THIS PETITIONER HAS EVEN BEEN DEPRIVED OF THIS FACILITY, AND UNLIKE IN THE CASE OF INTOXICATING LIQUORS UNDER THE EIGHTEENTH AMENDMENT, THE POSSESSION AND USE OF FIREARMS UNDER THE GUN CONTROL ACT IS NOT PROSCRIBED.

IT IS SUBMITTED THAT THE ACT, INSOFAR AS IT AFFECTS HOBBY COLLECTORS, MUST BE STRICKEN DOWN AS VIOLATIVE OF THIS PROVISION OF THE CONSTITUTION.

CERTIORARI IS SOUGHT ON THIS ISSUE IN ORDER TO BRING TO THE ATTENTION OF THIS COURT AN ISSUE WHICH HAS NOT BEEN PREVIOUSLY RULED UPON, AND THIS ISSUE IS BELIEVED APPROPRIATELY RAISED UNDER RULE 19 OF THE RULES OF THIS COURT.

WHETHER THE HOLDING BY THE TRIAL COURT THAT 'SCIENTER' IS NOT AN ESSENTIAL ELEMENT OF THE OFFENSE CHARGED IS IN VIOLATION OF THE PETITIONER'S RIGHT TO DUE PROCESS OF LAW UNDER AMENDMENT V OF THE CONSTITUTION OF THE UNITED STATES

IN THE OPINION THE TRIAL COURT HELD THAT NO SPECIFIC INTENT OR KNOWLEDGE OF VIOLATION OF THE LAW IS REQUIRED FOR THERE TO BE CRIMINAL CULPABILITY IN VIOLATION OF THE ACT. THE COURT BASED THIS FINDING UPON THE DECISION OF THIS COURT IN THE CASE OF UNITED STATES V. FREED (1971) 401 U.S. 601.

IT IS BELIEVED THAT THE RELIANCE OF THE TRIAL COURT ON FREED WAS INAPPROPRIATE.

FREED INVOLVED A VIOLATION OF THE NATIONAL FIREARMS ACT FOR UNREGISTERED POSSESSION OF HAND GRENADES.

THE COURT, IN THAT CASE, WAS CONSIDERING A STATUTE WHICH REQUIRES THE REGISTRATION OF CERTAIN CLASSES OF EXTREMELY DANGEROUS WEAPONS. THE COURT, NOTING THAT NOTHING WAS CONTAINED IN THE ACT REQUIRING SPECIFIC INTENT, HELD THAT THE VERY NATURE OF THE WEAPONS INVOLVED WAS

ADEQUATE TO ALERT THE POSSESSOR THAT THE ITEMS WERE THE PROPER SUBJECT OF FEDERAL REGULATION.

IN THAT CASE THE COURT OBSERVED AT P. 608

> "WHERE A PERSON DID NOT KNOW OF THE DUTY (TO REGISTER) AND WHERE THERE WAS NO PROOF OF THE PROBABILITY OF SUCH KNOWLEDGE, HE MAY NOT BE CONVICTED CONSISTENTLY WITH DUE PROCESS. WERE IT OTHERWISE, THE EVIL WOULD BE AS GREAT AS IT IS WHEN THE LAW IS WRITTEN IN PRINT TOO FINE TO READ OR IN A LANGUAGE FOREIGN TO THE COMMUNITY."
> (CITING LAMBERT V. CALIFORNIA 355 U.S. 225

IT IS SUBMITTED THAT WHERE IT IS HELD THAT SCIENTER, VICIOUS WILL OR MENS REA IS NOT AN ESSENTIAL ELEMENT OF AN OFFENSE SET FORTH IN AN ACT WHICH IS SO OPAQUE AS TO ITS MEANING AND SCOPE AS TO CONFUSE THE PETITIONER AND OTHERS SIMILARLY SITUATED, THE RIGHTS OF THE PETITIONER, OR ANY OTHER PERSON IN SIMILAR CIRCUMSTANCES, ARE VIOLATED, IN THAT THEY WOULD BE HELD CRIMINALLY CULPABLE WITHOUT DUE PROCESS OF LAW IN VIOLATION OF THE PROVISIONS OF AMENDMENT V OF THE CONSTITUTION OF THE UNITED STATES.

CERTIORARI IS SOUGHT AS TO THIS ISSUE IN THAT A FEDERAL COURT OF APPEALS HAS DECIDED A QUESTION OF IMPORTANT FEDERAL LAW WHICH HAS EITHER NOT BEEN PREVIOUSLY SETTLED BY THIS COURT, OR WHICH DECISION OF THE COURT OF APPEALS IS NOT IN ACCORDANCE WITH ANOTHER APPLICABLE DECISION OF THIS COURT. CERTIORARI IS BELIEVED JUSTIFIED UPON THIS ISSUE UNDER RULE 19 OF THE RULES OF THIS COURT.

C O N C L U S I O N

FOR THE REASONS SET FORTH IN THIS PETITION, CERTIORARI IS SOUGHT.

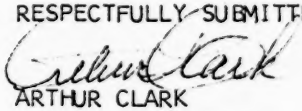
IN ADDITION TO THE FOREGOING REASONS, IT IS SUBMITTED THAT CERTIORARI IS JUSTIFIED IN THIS CAUSE FOR THE REASON THAT THE OPINION OF THE TRIAL COURT, AS AFFIRMED BY THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, RESULTS IN A SUBSTANTIAL MISCARRIAGE OF JUSTICE. THE PETITIONER HAS BEEN CONVICTED OF A MAJOR FELONY OFFENSE UNDER CIRCUMSTANCES THAT HE WAS NOT ABLE TO UNDERSTAND HIS DUTY UNDER THE LAW AND, EVEN IF HIS DUTY HAD BEEN CLEAR, HE WAS PRECLUDED BY THE VERY LAW HE IS ACCUSED OF VIOLATING FROM COMPLIANCE THEREWITH.

CERTIORARI IS ALSO BELIEVED JUSTIFIED ON THE GROUNDS THAT THERE ARE MANY THOUSANDS OF CITIZENS OF THE UNITED STATES WHO ARE EITHER COLLECTORS OF FIREARMS, OR USERS THEREOF, WHO ARE VIRTUALLY PRECLUDED FROM THE PURSUANCE OF THEIR CHOSEN

HOBBY BY REASON OF THE DECISIONS OF THE TRIAL COURT AND THE COURT OF APPEALS IN THIS CASE.

ACCORDINGLY, IT IS REQUESTED THAT THE COURT GRANT THIS PETITION AND ORDER THAT A WRIT OF CERTIORARI ISSUE.

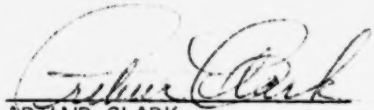
RESPECTFULLY SUBMITTED



ARTHUR CLARK
ROBERT WM. ENT
COUNSEL FOR PETITIONER
914 MAIN STREET
CINCINNATI, OHIO, 45202.

CERTIFICATION OF SERVICE

IT IS HEREBY CERTIFIED THAT SERVICE OF THE WITHIN PETITION FOR CERTIORARI HAS BEEN MADE UPON THE PLAINTIFF-APPELLANT BY DELIVERING A COPY THEREOF TO THE OFFICE OF THE UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF OHIO AT HIS OFFICE AT FEDERAL COURTHOUSE AND POST OFFICE BUILDING, CINCINNATI, OHIO, THIS 20 DAY OF JULY, 1973.



ARTHUR CLARK
ROBERT WM. ENT
COUNSEL FOR PETITIONER

CERTIFICATION OF SERVICE

THIS IS TO CERTIFY THAT SERVICE OF THE WITHIN APPENDICES, TOGETHER WITH A COPY OF THE PETITION FOR CERTIORARI, HAS BEEN MADE ON THE PLAINTIFF-APPELLEE BY PLACING COPIES THEREOF IN THE UNITED STATES MAIL ADDRESSED TO THE SOLICITOR GENERAL OF THE UNITED STATES WASHINGTON, D.C. 20530, THIS "24th DAY OF JULY, 1973.

ARTHUR CLARK
ROBERT WM. ENT
COUNSEL FOR DEFENDANT-
APPELLANT.